

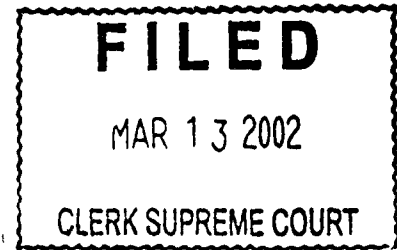
IN THE COURT OF APPEALS OF IOWA

No 1-612 / 00-0699
Filed March 13, 2002

SIOUX CITY COMMUNITY SCHOOL DISTRICT,
Petitioner-Appellant,

vs

PUBLIC EMPLOYMENT RELATIONS BOARD and
SIOUX CITY EDUCATION ASSOCIATION,
Respondent-Appellee



Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul,
Judge

The Sioux City Community School District appeals from a district court order on judicial review affirming the Public Employment Relations Board's decision that two Sioux City Education Association proposals were mandatory subjects of bargaining under Iowa Code section 20.9. **AFFIRMED.**

Brian L. Gruhn of Gruhn Law Firm, P.C., Cedar Rapids, for appellant

Jan V. Berry, Des Moines, for appellee Public Employment Relations
Board

Gerald L. Hammond, Des Moines, for appellee Sioux City Education
Association

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ

MILLER, J.

The Sioux City Community School District appeals from a district court order on judicial review affirming the Public Employment Relations Board's decision that two Sioux City Education Association proposals were mandatory subjects of bargaining under Iowa Code section 20 9 (1997) We affirm

I BACKGROUND FACTS AND PRIOR PROCEEDINGS

The Sioux City Community School District (District) is a public employer under Iowa Code section 20 3(11) (1997) The Sioux City Education Association (Association) is the union that represents the District's certified teachers. The Association is an employee organization as defined in Iowa Code section 20 3(4) The Public Employment Relations Board (PERB) is an agency established under Iowa Code Chapter 20 charged with administering the Public Employment Relations Act which includes collective bargaining between school district and unions pursuant to Chapter 20

The District had organized its school days under a formula of five classes, one preparation period, and one supervision period When the District sought to alter this formula the Association submitted various proposals regarding different aspects of the proposed changes During the course of negotiations between the District and the Association on the new formula a dispute arose concerning the negotiability status of some of the proposals advanced by the Association Included in the Association's proposals was the following disputed language

ARTICLE X WAGES

E Extra Assignment and Extended Contract

- 2 A secondary employee who teaches six (6) regular class periods in a seven (7) period day shall receive 9% of the base salary in addition to his/her regular salary
- 3 Middle school teachers will work on the basis of a seven period day plus an additional thirty (30) minutes for Quest, T A and Exploratory courses The length of the regular workday will remain 7 hours and 30 minutes
- 4 Middle school teachers will receive additional compensation as provided in Article X(E)(2) for sixth period assignments not including the additional 30 minute period devoted to Quest, T A or Exploratory courses

The District filed a "Petition for Resolution of Negotiability Dispute" with the PERB on March 8, 1999 involving nine of the Associations proposed paragraphs. The PERB issued a preliminary ruling on the negotiability dispute on April 9, 1999. In its preliminary ruling the PERB addressed all nine paragraphs in the District's petition and ruled that some were mandatorily negotiable and some represented only permissive subjects of bargaining.

The District subsequently requested a final ruling from the PERB on only the three paragraphs set forth above. The PERB issued its final ruling on December 6, 1999 expanding on its preliminary ruling and ultimately determining provisions X(E)(2) and X(E)(4) were mandatory subjects of bargaining under the Iowa Code section 20.9 category of "wages." The District filed a petition for judicial review challenging the PERB ruling on paragraphs X(E)(2) and X(E)(4).¹ The District's petition for judicial review alleged that the PERB decision was in

¹ The PERB also ruled that the first sentence of paragraph X(E)(3) was a permissive subject of bargaining. However, on judicial review the District only challenged the PERB's ruling regarding X(E)(2) and X(E)(4). Therefore these are the only paragraphs at issue on appeal.

4

violation of statutory provisions, in excess of PERB statutory authority, in violation of agency rules, made upon unlawful procedure, affected by errors of law, unsupported by substantial evidence in the record, and unreasonable, arbitrary, capricious, and characterized by an abuse of discretion

The district court affirmed the PERB's negotiability ruling. The court found the challenged paragraphs related only to wages, did not require any negotiation of workload, did not require a seven period day, did not prescribe what duties were to be performed, but instead merely would require additional compensation for certain duties.

The District appeals the district court's decision, contending the court erred in affirming the PERB ruling. The District argues the Association's proposals attempt to negotiate maximum workload and hours for its teachers as well as the number of periods in a school day. As such, the District asserts these paragraphs impinge on its right to direct the work of its teachers by making the assignments it wishes during the school day and therefore must be permissive subjects of bargaining.

II STANDARD OF REVIEW

Our scope of review of a PERB final decision is governed by Iowa Code section 17A 19(8). *Decatur County v Public Employment Relations Bd*, 564 N W 2d 394, 396 (Iowa 1997) (citing *State v Public Employment Relations Bd*, 508 N W 2d 668, 670 (Iowa 1993)). We review the district court's and the PERB's interpretations of statutes on error. *Id*

The principles underlying judicial review of an agency decision provide that when a district court exercises the power of judicial review conferred by Iowa

Code section 17A 19 it is functioning in an appellate capacity to correct errors of law, as specified in section 17A.19(8). *Harlan Sprague Dawley, Inc v Iowa State Bd of Tax Review*, 601 N.W 2d 66, 68 (Iowa 1999) Therefore, when we review a decision a district court rendered pursuant to section 17A 19 the sole question is whether the district court correctly applied the law *Id* "In order to make that determination, this court applies the standards of section 17A 19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court " *Id* (quoting *Foods, Inc v Iowa Civil Rights Comm'n*, 318 N W 2d 162, 165 (Iowa 1982))

While we must make an independent determination as to the proper construction and application of a particular statutory provision, we must also give appropriate weight to the judgment of those whose special duty it is to administer the questioned statute, here the PERB See *West Des Moines Educ Ass'n v Public Employment Relations Bd* , 266 N W 2d 118, 124-25 (Iowa 1979)

III MERITS

Chapter 20 of the Iowa Code governs collective bargaining between public employers and public employee organizations A determination of whether a proposal is a permissive or mandatory subject of bargaining involves two provisions of the Iowa Code, sections 20 7 and 20 9 Iowa Code section 20 7 grants certain rights exclusively to public employers while section 20 9 *requires* the parties to negotiate on certain subjects and *permits*, but does not require, negotiations on others Section 20 9 provides in relevant part

The public employer and the employee organization shall meet at reasonable times . . . to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence,

shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon.

Iowa Code §20 9 (1997)

Section 20 9 creates two categories of negotiable subjects (1) mandatory subjects that "shall" be negotiated by the parties, and (2) permissive subjects that the parties "mutually agree" to negotiate *Decatur County*, 564 N W 2d at 396, *State v Public Employment Relations Bd*, 508 N W 2d 668, 671 (Iowa 1993), *City of Fort Dodge v Public Employment Relations Bd.*, 275 N.W.2d 393, 395 (Iowa 1979) "The classification of a particular item is important, because only mandatory items may be taken through statutory impasse procedures to final arbitration, unless the employer consents " *City of Fort Dodge*, 275 N W 2d at 395 If a proposal would have the effect of prescribing what duties would be performed at certain times by employees it would impinge on the employer's right to direct its employees under section 20 7 and thus must be a permissive subject of bargaining See *Iowa City Ass'n of Fire Fighters, IAFF Local 610 v Public Employment Relations Bd*, 554 N W 2d 707, 711 (Iowa 1996)

In determining whether a proposal is a mandatory bargaining subject within section 20 9 we apply several well-established rules "Since our earliest cases under chapter 20, we have adhered to a strict reading of the 'laundry list' of mandatory subjects of bargaining under section 20 9 " *Id* at 710 This strict interpretation has received at least the tacit approval of the legislature over the past twenty-two years See *Id* We look only to the subject matter and not the merits of the proposal *Decatur County*, 564 N W 2d at 396 Our only task is to

8 7

determine whether the proposal *on its face* fits within a definitionally fixed section 20.9 mandatory bargaining subject. *Id.* at 397, *Iowa City Ass'n of Fire Fighters*, 554 N W 2d at 710, *Public Employment Relations Bd*, 508 N W 2d at 673 "In determining the scope of the topic of a disputed proposal we look to what the proposal if incorporated through arbitration into the collective bargaining contract, would bind an employer to do " *Decatur County*, 564 N W 2d at 397 (quoting *State v Public Employment Relations Bd*, 508 N W 2d 668, 673 (Iowa 1997))

In the present case the District contends that the Association's proposals deal with permissive subjects of bargaining because they require a negotiation of maximum workload, they require the day be divided into seven periods and they restrict the District's ability to assign a teacher to as many teaching periods as it chooses The Association responds that its proposals are mandatory subjects of bargaining because they deal strictly with wages, they do not require there be seven-period days, and they in no way set a maximum workload

Both the PERB and the district court agreed with the Association's position and ruled the proposals were mandatory subjects of bargaining In a lengthy and detailed final ruling the PERB analyzed several of its prior decisions in which it had looked at language similar to that proposed by the Association here and determined whether such proposals were mandatory or permissive subjects of bargaining Applying the principles of these prior cases the PERB determined paragraphs X(E)(2) and X(E)(4) were mandatory subjects of bargaining The PERB found the proposals "simply establish a premium pay rate based on

workload and assignments" and therefore concluded "that these two proposals are mandatorily negotiable under the Iowa Code section 20.9 category 'wages'."

The district court agreed with the PERB and found the Association's proposals to be mandatory subjects of bargaining because they dealt strictly with wages. The court determined paragraph X(E)(2) would not require there be seven periods in a day as the District argues. Furthermore the court found:

The language does not require any negotiation of the workload - - if the teacher teaches six periods in a seven-period day, the teacher is paid the extra amount. If the teacher does not teach six periods in a seven-period day the provision is inapplicable. The language in no way sets a maximum workload.

Turning to paragraph X(E)(4) the court concluded:

The language would in no way prevent the Petitioner from directing its teachers or to determine the class periods or to make any assignment it wished. It simply would require the Petitioner to pay more if it assigns a teacher for a sixth period other than Quest, T A , or Exploratory courses. It would not prevent assignment to teach seven class periods.

The proposal in the case at bar does not prescribe what is to be done at any time, but merely provides that teaching six regular periods in a seven-period day would entitle the teacher to additional pay. The language does not affect the employer's right to assign a teacher a sixth period, but merely prescribes the amount to be paid if the employer does so and if a seven-period day is in effect.

We agree with the analysis of the district court as set forth above and adopt it as our own. This is the type of question the PERB exists to decide. Our conclusion is the same as the district court's, that the proposals in question fall under the category of "wages" found in Iowa Code section 20.9 and would neither impinge on the District's right to direct the work of its employees nor

require a seven-period day Paragraphs X(E)(2) and X(E)(4) are mandatory subjects of bargaining under Iowa Code section 20 9 We affirm the district court's affirmance of the PERB's final ruling on negotiability

AFFIRMED